IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2465 OF 2004

IN

FIRST APPEAL NO. 562 OF 2002

ANWAR BASHIR AHMED ..APPELLANT

V/S

RAVINDRA I. SETHNA & ORS. ..RESPONDENTS

MR. PANDEY I/BY M/S. PANDEY & CO. FOR APPELLANT.

J.J. XAVIER FOR RESPONDENT NOS. 2 & 3.

CORAM : S.K. SHAH, J.

DATE : 12TH APRIL, 2007.

P.C.

1. This application is for seeking appointment of some officer of this court as Commissioner to visit the premises and record its condition and allow the Appellant to carry out tenanted repairs to the suit premises. In the alternative seeking direction to the landlord to carry out the tenantable repairs to the suit premises and further seeking direction to the Respondent No. 2 BMC to forthwith issue repair permission.

2. There was a notice under section 351 of the BMC Act on the allegations that the structure referred to in the notice was unauthorised structure. The Appellant challenged that notice in the City Civil Court by way of suit. That suit is dismissed and against that order of dismissal the present Appeal is filed. Therefore, basically we are concerned with the structure which is mentioned in the notice under section 351 of the BMC Act. It is obvious that the entire premises in the unauthorised construction is carried out which is the subject matter of 351 notice is not the subject matter of this Appeal or Suit.

3. Therefore the prayer which the Appellant is asking for are not the subject matter of the Suit or Appeal and, therefore, they cannot be entertained here and therefore the application stands rejected.

4. At this stage, learned counsel for the Appellant states that the entire premises are the subject matter of notice under section 351 of the BMC Act and if this is so, then no relief can be granted in this application.

(S.K. SHAH, J.)